



712 Fifth Avenue
31st Floor
New York, New York 10019
Phone: (212) 682-5340
Fax: (212) 884-0988

April 25, 2019

Via ECF

The Honorable Robert W. Lehrburger
United States Magistrate Judge
Southern District of New York
500 Pearl St, Courtroom 18D
New York, New York 10007

Re: *Hudson v. National Football League, et. al., 1:18-cv-04483 (GHW) (RWL)*

Dear Judge Lehrburger:

In accordance with this Court's order dated April 11, 2019 (Docket No. 82), the parties have conferred and plaintiff is submitting this letter on behalf of all parties in the above-referenced action to provide the Court with a status report and a statement on the parties' willingness to participate in a settlement conference.

Status of the Litigation

The complaint in this action was filed on May 21, 2018 on behalf of putative class. On August 31, 2018, Defendants moved to dismiss the complaint (Docket Nos. 52-59; 61-62). Plaintiff filed his opposition on October 20, 2018 (Docket Nos. 72-73). Defendants filed reply memoranda on November 30, 2018 (Docket Nos. 74-76). Argument on the motion was held on December 19, 2018 before Judge Sweet.

Previously, the parties filed a Joint Rule 26(f) Report on September 25, 2018 (Docket No. 63). On October 5, 2018, the Court entered the parties' Confidentiality Stipulation. An initial conference was held before Judge Sweet on November 27, 2018.

Issues for the Court to Resolve

The parties have differing views on whether discovery should proceed while the motions to dismiss are pending.

In September 2018, Plaintiff served Requests for Documents and Interrogatories. The parties discussed Plaintiff's discovery requests at the status conference before Judge Sweet on November 27, 2018. Judge Sweet required Defendants to submit formal written responses, but allowed Defendants to defer production of responsive documents until after a decision on the



Letter to Magistrate Judge Robert W. Lehrburger

April 25, 2019

Page 2

motions to dismiss. Consistent with Judge Sweet's ruling, Defendants provided formal written responses to Plaintiff's requests on January 10, 2019. Neither Plaintiff nor Defendants have made further requests for discovery since the November 27 conference, although counsel for Plaintiff and counsel for the Board Defendants have met and conferred about the Board Defendants' responses to discovery.

Plaintiff's position. At the status conference on November 27, 2018, in response to a question from Plaintiff's counsel, Judge Sweet explicitly stated that discovery was not stayed. The fact that the counsel for Plaintiff and counsel for the Board held a meet and confer about the Board Defendants' responses to discovery illustrates that there is no broad stay of discovery. Even as to deferral of production, at the time of the November 27, 2018 status conference it was apparent that Judge Sweet contemplated that the motions to dismiss would be promptly heard and decided. A hearing on the motions to dismiss was held on December 19, 2018, but, of course, no decision on the motions to dismiss has been issued. Given the passage of nearly a year since Plaintiff filed his complaint, Plaintiff believes that at least written discovery should proceed, including discovery pursuant to Rules 33, 34, 36 and document subpoenas. Plaintiff's discovery requests are targeted and limited and Plaintiff believes the documents requested to date could be produced without significant burden.

Defendants' position. Defendants dispute that Judge Sweet "explicitly stated that discovery was *not* stayed" during the November 2018 conference. Discovery was stayed, and the parties' failure to conduct any discovery since the conference demonstrates as much. In any case, Defendants believe that further discovery should remain stayed pending the resolution of Defendants' motions. Judge Sweet's directive was issued without prejudice to any party's claims or defenses and after the parties filed their principal briefs on the motions to dismiss. Defendants therefore see no need to lift the current stay, particularly when a ruling on Defendants' dispositive motions is forthcoming, and that ruling has the potential to eliminate claims in and parties to this case.

Parties' Willingness to Participate in a Settlement Conference

Plaintiff's position. Plaintiff believes based on the briefing submitted to the Court that the motions to dismiss should be denied. Despite Plaintiff's confidence in his claims, the issues raised by this action involve whether Plaintiff and other members of the Class are entitled to important additional disability benefits. Given the arguments on the motions, Plaintiff believes that the Parties should have a good understanding of their respective positions and be in a position to evaluate the risks of the litigation. As such, Plaintiff believes that a settlement conference at this time would be beneficial to the parties.





Letter to Magistrate Judge Robert W. Lehrburger

April 25, 2019

Page 3

Defendants' position. Defendants believe settlement discussions pending the outcome of the motion to dismiss would be premature. As set forth in the parties' 26(f) Report (Docket No. 63) and discussed during the November 27, 2018 conference with Judge Sweet, Defendants continue to believe that class-wide settlement is inappropriate at this time. To the extent Plaintiff is interested in resolving his individual claims, however, Defendants are amenable to participating in a settlement conference.

Respectfully,

A handwritten signature in blue ink that appears to read "Daniella Quitt".

Daniella Quitt

cc: All Counsel (*via ECF*)

